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1651

FILE NO. A34368-PCT-USA 070180.0143
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Fuhr et al.
Serial No. : 09/868,200 Examiner : Gitomer, Ralph J.
Filed : June 14, 2001 Group Art Unit : 1651
For : PROCESS AND DEVICE FOR CELL TRACE BASED TESTING AND
CELL CULTIVATION

SUBMISSION OF DECLARATION

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231

May 6, 2004
Date of Deposit

Carmella L. Stephens
Name

41,328
PTO Reg. No.

Carmella L. Stephens
Signature

May 6, 2004
Date of Signature

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

On April 27, 2004, Applicants submitted an Amendment in response to the Office Action dated October 27, 2003. Reference was made in the Amendment to a Katz Declaration, however, at the time the Amendment was filed the Declaration had not been executed.

Applicants submit herewith the executed Declaration and request consideration of said Declaration.

As set forth in the Declaration, not all the authors listed on the Fuhr reference upon which a rejection under 35 U.S.C. §102(a) was based, are inventors of the present invention. Specifically, Dr. Heiko Zimmermann only made atomic force microscopy (ATM) measurements as well as optical microscopy measurements. Dr. Hermine Hitzler also contributed to such measurements and, in addition, conducted a literature search for publications relating to interference reflection microscopy. Dr. Horst Niehus also contributed to the ATM technique. Further, Dr. Hermine Hitzler and Dr. Horst Niehaus contributed to the draft of the publication text. Given the non-inventive contribution of Dr. Heiko Zimmermann, Dr. Hermine Hitzler and Dr. Horst Niehaus, the claimed invention cannot be anticipated under 35 U.S.C. §102(a) and, therefore, the rejection should be withdrawn.

Entry of the foregoing remarks into the file history of the above identified application is respectfully requested. Withdrawal of all rejections and reconsideration of the claims is requested. An early allowance is earnestly sought.

Respectfully submitted,

May 6, 2004

Carmella L. Stephens

Rochelle K. Seide
PTO Reg. No. 32,300
Attorney for Applicant

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Attorney for Applicant

FILE NO.: A34368 PCT-USA
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Furh et al.
Serial No. : 09/868,200 Examiner: Gitomer, Ralph J.
Filed : September 10, 2001 Group Art Unit: 1651
For : PROCESS AND DEVICE FOR CELL TRACE BASED CELL
TESTING AND CELL CULTIVATION

DECLARATION OF DR. GUNTER FUHR,
DR. EKKEHARD RICHTER AND DR. ROLF HAGEDORN

I hereby certify that this paper is being deposited with the
United States Postal Service as First Class Mail in an
envelope addressed to: Assistant Commissioner for
Patents, Washington, D.C. 20231, on:

Carmella L. Stephens

Attorney Name

Carmella L. Stephens41,328

PTO Registration No.

May 6, 2004

Assistant Commissioner for Patents
Washington, D.C. 20231

We, GUNTER FUHR, EKKEHARD RICHTER AND ROLF HAGEDORN, do
declare:

1. We are co-inventors of the invention disclosed in the above-identified
application.

2. Günter Fuhr, Ekkehard Richter, Heiko Zimmermann, Hermine Hitzler,
Horst Niehus and Rolf Hagedorn are authors of the publication entitled "Cell Traces-
Footprints of Individual Cells During Locomotion and Adhesion" (1998, Biol. Chem.
379:1161-1173).

NY02:406679.1
NY02:273740.1

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3. Based on their contributions, it is our belief that the authors Dr. Heiko Zimmermann, Dr. Hermine Hitzler and Dr. Horst Niehus are not co-inventors of the invention disclosed in the above-identified application. Specifically, Dr. Heiko Zimmermann made atomic force microscopy (ATM) measurements as well as optical microscopy measurements. Dr. Hermine Hitzler also contributed to such measurements and, in addition, conducted a literature search for publications relating to interference reflection microscopy. Dr. Horst Niehus also contributed to the ATM technique. Further, Dr. Hermine Hitzler and Dr. Horst Niehaus contributed to the draft of the publication text.

6. We hereby declare further that all statements made herein by our own knowledge are true and that all statements made on information and belief are believed to be true and further that we make these statements with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application of any patent issuing therein.

Dated: 29.4.04

Dr. Günter Fuhr

Dr. Ekkehard Richter

Dr. Rolf Hagedorn

NY02:406679.1
NY02:373759.1